On May 26, 1972 the defendant's former solicitors wrote to the plaintiff in the following terms:

"We are instructed that you are the monthly tenant of our client in respect of the abovesaid premises. We are instructed by our client to give you notice, which we hereby do, to quit and deliver up possession of the said premises to our client within one month from the date of receipt hereof or one month from the end of the current month of your tenancy."

On July 18, 1972, which was 10 months after the issue of the writ in this action, the defendant issued a summons in the Sessions Court to recover possession of the premises. The first sentence of his statement of claims reads "The defendant is the plaintiff's monthly tenant in respect of the ground floor of premises No. 43 Penang Street ... The said premises are subject to the Control of Rent Act 1966." In the light of these later events, it is difficult to suppose that the defendant then thought that he had granted to the plaintiff a mere licence to occupy the ground floor of No. 43.

For the reasons indicated, their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be allowed, and that the order of June 30, 1978 of the Honourable Mr. Justice Gunn Chit Tuan should be restored. The part of the order of the Federal Court of February 2, 1979 which gave a general liberty to apply to the High Court can, in the opinion of their Lordships, usefully remain on foot. The respondent will pay the costs of the appellant in the Federal Court and before this Board.

Appeal allowed.

Solicitors: *Gesters; Coward Chance.*

SINGAPORE REPORTS

SWEE BEE TRADING CO. PTE. LTD. v. LANHO CORPORATION (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ.) May 3, 1983]
[Singapore – Civil Appeal No. 26 of 1982]

Hire-Purchase – Sale of 18 air compressors by hire-purchase – Claim against hirers for payment under Hire-Purchase Agreement – Whether respondents were estopped from asserting non-existence of air compressors as against financiers.

The facts of this case were as follows. In late February 1976, the appellants acted as dealer for the respondents in the hire-purchase of 4 or 5 air compressors. The appellants, through their manager Tay Boon Koo, dealt with one Daniel Lim. The latter was the son of the owner of the sole-proprietorship, Chop Siong Lee. Chop Siong Lee were the intended suppliers of 18 air compressors which the appellants were importing from Japan by a letter of credit opened by the Bank of America. At the same time, Daniel Lim was Managing Director of the respondents. The respondents were in the business of hiring out heavy equipment, including air compressors. The respondents wanted to hire purchase more air compressors. Daniel Lim negotiated with Tay.

Subsequently, the appellants wrote a letter dated March 22, 1976 to Chop Siong Lee offering to act as a dealer in the sale and hire purchase of the 18 air compressors. The purchase price payable to the suppliers was fixed at $261,000 of which the respondents were to make a down payment of $91,000. The appellants offered to arrange the hire-purchase finance of $170,000 repayable over a period of 24 months with interest at 10% per annum flat. Daniel Lim signed the acceptance of the offer on behalf of Chop Siong Lee and his father's written authority to him to bind Chop Siong Lee was sent to the appellants. On July 1, 1976 the hire-purchase agreement was signed by Daniel Lim and Han Choon Poo on behalf of the respondents. A Delivery receipt dated July 1, 1976 was signed by Daniel Lim and Han Choon Poo. It made the unequivocal representation that the respondents had "taken delivery" of the 18 air compressors.

On July 2, 1976, the appellants as a dealer paid Chop Siong Lee $170,000 and were reimbursed by the financiers the same day. Before the payment and reimbursement, the said hire purchase agreement and the Delivery Receipt were sent by the appellants to the financiers.

After the signing of the hire-purchase agreement and after the fourth instalment was paid, the respondents with the consent of the financiers transferred the 18 air compressors to Siong Lee Heavy Equipment Pte. Ltd. which belonged to Daniel Lim and his brother. Under the assignment, Siong Lee Heavy Equipment Pte. Ltd. agreed to pay the outstanding instalments. However, under Clause 3 of the assignment, the respondents remained liable under the Agreement to the financiers. Only one further payment was made by Siong Lee Heavy Equipment Pte. Ltd.

After failing to obtain recourse from the respondents, the financiers duly exercised their rights under their re-purchase agreement with the appellants. Pursuant to it, the appellants paid the financiers $161,500 being the balance due under the hire-purchase agreement. The rights, title and interest of the financiers were assigned in writing to the appellants.

In the court below, the appellants' claim against the respondents for $161,500 plus interest was dismissed on the ground that since the 18 air compressors were never delivered to the respondents, there was a total failure of consideration. The appellants appealed.

Held, allowing the appeal: in all the circumstances of the case, the respondents were estopped from asserting the non-existence of the 18 air compressors as against the financiers and the appellants. The respondents had made express representations both in writing and orally on July 1, 1976 and again in writing in the course of the purported assignment in December 1976, that they had taken delivery of the compressors. The financiers had acted on the representations of July 1, 1976 which were plainly intended for them to act upon and paid out the sum of $170,000 to their detriment.

Cases referred to:

(1) *Karflex Ltd.* v. *Poole* [1933] 2 K.B. 251.

(2) *Warman* v. *Southern Counties Car Finance Corpn. Ltd.* [1949] 2 K.B. 576.

COURT OF APPEAL.

M. Karthigesu (*Michael B.B. Ong* with him) for the appellants.

Cheong Yuen Hee for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): In the High Court, the respondents were sued as hirers of 18 air compressors for $161,500 and interest thereon from July 1, 1977 in respect of 19 instalments payable under a Hire-Purchase Agreement dated July 1, 1976 (hereinafter referred to as "the Agreement"). The Agreement was entered into with Credit Corporation (Singapore) Limited, a Singapore finance company (hereinafter referred to as "the Financiers").

The Financiers were not parties to these proceedings because on receipt of full indemnity they had assigned their rights, title and interests under the Agreement to the appellants who as assignees had commenced these proceedings against the respondents.

The learned trial Judge dismissed the claims of the appellants on the ground that since the 18 air compressors were never delivered to the respondents there was a total failure of consideration: see *Karflex Ltd.* v. *Poole*(1) *and Warman* v. *Southern Counties Car Finance Corpn. Ltd.*(2) In this appeal, no criticism was nor could be made against this part of the judgment.

In rejecting the appellants' claims, the learned trial Judge however found that "the Plaintiffs (the appellants) themselves were negligent" and also held that "the facts of this case did not warrant the application of the estoppel doctrine to prevent the respondents from pleading the non-existence of the air compressors."

The sole question before us is whether the respondents were estopped from asserting the non-existence of the air compressors as against in effect the Financiers.

The facts giving rise to these proceedings are as follows. In the following narrative, it should be noted that the appellants had played the role of a party commonly known as "the dealer" in hire purchase transactions. This role is quite different from their present capacity as assignees and plaintiffs in the proceedings below. Dealers in this trade normally buy from suppliers goods which are required for hire-purchase by hirers and also arrange the hire-purchase transactions between the hirers and finance companies. It is a part of such transactions that dealers, as had happened in this case, sell the goods to finance companies who, in turn, hire out the goods to hirers under written hire purchase agreements. Such dealers are often required simultaneously to enter into re-purchase agreements with finance companies under which they agree to indemnify the finance companies any losses suffered in the hire purchase transaction in consideration for which the finance companies would assign to them their rights, title and interest under the hire-purchase agreements. In the result, dealers are left with the carriage of prosecuting any claims against any delinquent hirer.

In late February 1976 the appellants acted as such a dealer for the respondents in the hire-purchase of some 4 or 5 air compressors, dealing with one Daniel Lim. The appellants' manager, Tay Boon Koon, first met him. The transaction proceeded without any hitches.

On or about March 21, 1976 the appellants again dealt with Daniel Lim who turned out to be the villain he was. He was the son of the owner of a sole-proprietorship known as Chop Siong Lee.

Chop Siong Lee were the intended suppliers of the 18 air compressors which they were importing from Japan by a letter of credit opened by the Bank of America.

At the same time, Daniel Lim wore another hat. He was Managing Director of the respondents. The respondents were in the business of hiring out heavy equipment, including air compressors. Daniel Lim made a favourable impression on Tay who thought that the respondents' business was substantial. Favourable reports were received from the respondents' bankers. The respondents wanted to hire purchase more air compressors. Daniel Lim negotiated with Tay.

Following the negotiations, the appellants wrote a letter dated March 22, 1976 to Chop Siong Lee offering to act as a dealer in the sales and hire purchase of the 18 air compressors. The purchase price payable to the suppliers was fixed at $261,000 of which the respondents were to make a down payment of $91,000. The appellants offered to arrange the hire purchase finance of $170,000 repayable over a period of 24 months with interest at 10% per annum flat. The terms of the offer called for "sight" by the appellants of copies of the relevant letter of credit established by the suppliers, the bill of lading and other shipping documents. Chop Siong Lee was to cause the respondents to make the down payment and sign the hire-purchase agreement.

Daniel Lim signed the acceptance of the offer on behalf of Chop Siong Lee and his father's written authority to him to bind Chop Siong Lee was sent to the appellants.

In June Daniel Lim phoned Tay to say that the air compressors had arrived. Tay went to the PSA Godowns and was shown the air compressors by Daniel Lim. They were also accompanied by one Han Choon Poo, another director of the respondents. At the trial he was the only witness for the respondents. After the inspection, the sighting of the documents called for in the offer took place. It was then agreed that the hire-purchase agreement would be entered into between the Financiers and the respondents.

It was also agreed that the appellants as the dealer would not make any payment to Chop Siong Lee against the latter's invoice until the respondents had signed a delivery receipt indicating that they had taken delivery of the air compressors from Chop Siong Lee, as was contemplated under sub-clause 3(o) of the Agreement.

On July 1, 1976 the Agreement was signed, Daniel Lim and Han Choon Poo signed on behalf of the respondents. Sub-clause 3(o) provided that it was the obligation of the respondents as the hirers to obtain delivery of the goods.

Before the Agreement was signed, Daniel Lim handed to Tay the crucial document also dated July 1, 1976 and which bore the heading "DELIVERY RECEIPT". It was signed by both Daniel Lim and Han Choon Poo. It was addressed to the appellants as a dealer and although it was not addressed to the Financiers, its representations were plainly intended for the Financiers. It made the unequivocal representation that the respondents had "taken delivery" of the 18 air compressors. Daniel Lim had also verbally told Tay that the respondents had taken delivery of the air compressors.

On July 2, 1976 the appellants as a dealer paid Chop Siong Lee $170,000 and were reimbursed by the Financiers the same day. Before the payment and reimbursement, the Agreement and the delivery receipt were sent by the appellants to the Financiers.

At this time, however, the 18 air compressors were still in the possession of Bank of America as pledgees. The intended suppliers were not the legal owners of the goods, not having paid for them. Both Chop Siong Lee and the respondents through the knowledge of its Managing Director knew this and also knew that the representation by the respondents that they had taken delivery of the air compressors were false. On the other hand, the appellants as the dealer and the Financiers were completely in the dark.

After the Agreement was signed, the respondents paid four instalments under the Agreement. After the fourth instalment, one Jeffrey Cheah, yet another director of the respondents, informed Tay that the respondents wanted to transfer the 18 air compressors to a company known as Siong Lee Heavy Equipment Pte. Limited which belonged to Daniel Lim and his brother. The Financiers had no objection to the assignment and it was documented on December 9 1976. Both Daniel Lim and Han Choon Poo signed this assignment on behalf of the respondents. It cannot be too strongly emphasised that some 5 months after

the Agreement the respondents continued to represent to the Financiers that they had in their possession the 18 air compressors in respect of which they were purporting to assign their rights under the Agreement to Siong Lee Heavy Equipment Pte. Ltd.

Under the assignment, Siong Lee Heavy Equipment Pte. Ltd. agreed to pay the outstanding instalments. However, under Clause 3 of the assignment the respondents remained liable under the Agreement to the Financiers.

Only one further instalment was paid by Siong Lee Heavy Equipment Pte. Ltd. After this, the appellants' efforts to obtain payments drew a blank until shortly before the proceedings. They did not receive any reply to their letters. No one from the respondents complained that they had not received the goods until this fact was first asserted by the respondents' solicitors in December 1977.

After failing to obtain recourse from the respondents, the Financiers duly exercised their rights under their re-purchase agreement with the appellants. Pursuant to it, the appellants paid the Financiers $161,500 being the balance due under the Agreement and the rights, title and interest of the Financiers were accordingly made over in writing to the appellants. The appellants therefore in the proceedings below claimed against the respondents the sum of $161,500 plus interest thereon at 10% per annum from January 1, 1977 under the Agreement.

At the trial, it emerged that Daniel Lim had disappeared, his father was adjudicated a bankrupt and Siong Lee Heavy Equipment Pte. Ltd. was compulsorily wound up.

In all the circumstances, we have come to the conclusion that the respondents were indeed estopped from asserting the non-existence of the 18 air compressors as against the Financiers and the appellants who derive title from the latter. The respondents had made express representations both in writing and orally on July 1, 1976 and again in writing in the course of the purported assignment in December 1976, that they had taken delivery of the compressors. The Financiers had acted on the representations of July 1, 1976 which were plainly intended for them to act upon and paid out the sum of $170,000 to their detriment: see Vol. 16 *Halsbury's* Laws of England, 4th edn., paragraphs 1591-3.

In addition, the respondents paid 4 instalments and caused Siong Lee Heavy Equipment Pte. Ltd. to pay the 5th instalment under the Agreement. It would lie ill in the mouth of the respondents to assert now that the air compressors were non-existent or that the Financiers were not the owners. Daniel Lim was the Managing Director of the respondents and it was within his ostensible authority to sign the delivery receipt and make the representations: see Vol. 16 *Halsbury's* Laws of England, 4th edn., paragraph 1603. This document and the subsequent conduct of the respondents, including the purported assignment in late 1976, led the Financiers to believe and they must have believed that the 18 air compressors were safely in the possession of the respondents free from any adverse claims.

We find the following quotations cited to us by counsel for the appellants from *Goode* on Hire Purchase Law and Practice, 2nd Edition, at pages 218 and 223 rather apposite:–

At page 218:

"It remains only to note that if the hirer enters into the agreement with full knowledge of an adverse claim he cannot afterwards set up the existence of such claim as a ground for terminating the agreement, unless the claim is one which the owner undertook to settle as part of his agreement with the hirer."

At page 223:

"It is uncertain whether a hirer who signs a receipt for goods although they have not been delivered and do not in fact exist is estopped from pleading their non-existence in an action brought against him for breach of contract by an owner acting in good faith who was induced by the hirer's receipt to believe that the goods had in fact been delivered and to pay the dealer as a result of that belief. It is submitted that he would be so estopped since – unlike the case of a hirer who carelessly signs an agreement in blank – he is making a statement which to his knowledge is untrue and by which the owner is induced to act to his detriment."

We now turn to the finding that the appellants were negligent. The learned trial Judge found that the appellants as the dealer were not at all concerned about title to the air compressors. In our view, they and the Financiers did not owe any duty of care to the respondents who had assumed the obligation to take delivery of the air compressors under sub-clause 3(o) of the Agreement. If the respondents had fulfilled their contractual duty and taken delivery, the pledge of the Bank of America would have been extinguished. Accordingly, the question of negligence ought not to have arisen at all.

For these reasons, we would allow the appeal with costs here and below. The judgment below is set aside and we give judgment for the appellants in the sum of $161,500 together with interest thereon at 10% per annum calculated from January 1, 1977 up to date hereof.

Appeal allowed.

Solicitors: *Michael B.B. Ong & Co.; Chan, Goh & Co.*

ART TREND LTD. v. BLUE DOLPHIN (PTE.) LTD. & ORS.

**[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.)
May 4, 1983]
[Singapore – Civil Appeal No. 38 of 1982]**

Practice & Procedure – Interim Mareva injunctions – Hardship to defendants – Removal of injunctions allowed by High Court and damages awarded to defendants – Appeal against decision of High Court.

The appellants in this case claimed against the respondents the total sum of US$728,468.65 under bills of exchange drawn by the appellants and accepted by the respondents, and return guarantees given by both respondents in favour of the appellants. The appellants obtained interim *Mareva* injunction against the respondents which sought to freeze the assets of the respondents to US$1.23 million. In effect, the respondents were restrained from removing from Singapore any of their assets or otherwise pledging them or giving them by way of security. The respondents were also restrained from re-directing any payments made or to be made by their debtors from the accounts with their several banks. The business operations of the respondents were brought to a grinding halt. The learned trial judge considered the conduct of the appellants reprehensible and discharged the injunctions. Damages against the appellants were ordered (see [1983] 1 M.L.J. 25]. The appellants appealed.

Held, dismissing the appeal: the interim injunction in this case was a *Mareva* injunction. It was not a case where the final remedy sought was for a permanent injunction. The appellants did not dispute the respondents' right to an inquiry as to damages as indeed they could not having regard to the terms of their undertaking to the court of May 6, 1982 and May 21, 1982. In these circumstances the learned judge was entitled to make the order for immediate assessment and payment of any damages sustained by the respondents by reason of the *Mareva* injunction.

Case referred to:

(1) *Ushers Brewery* v. *King & Co.* [1972] 1 Ch. 148

COURT OF APPEAL.

M. Beloff Q.C. (*Yang Lih Shyng* with him) for the appellants.

M. Karthigesu (*Abdul Rashid bin Abdul Gani* with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgement of the Court): On May 5, 1982 the appellants, an English company, commenced an action against the respondents. The claim against the 1st respondent, a Singapore company, was for (1) the sum of US$33,943.05 under a bill of exchange due on July 17, 1981 drawn by the plaintiffs and accepted by the 1st respondent plus interest and commission under a discounting and financing agreement entered into between them and dated February 12, 1980; and (2) the sum of US$326,202.17 under a written guarantee dated November 11, 1981 given by the first respondent in favour of the plaintiffs and in which the first respondent had guaranteed the payment of all the liabilities of a Nigerian company known as Ojomo Industries (Nigeria) Limited (hereinafter referred to as "Ojomo") plus interest at the date of the writ amounting to US$128,394.23 and further interest and commission payable under the guarantee.

The claim against the 2nd respondent, a partnership firm of three brothers dealing in textiles, in real estate and electronic goods, was for (1) the sum of US$182,407.93 under a bill of exchange due on May 6, 1981 drawn by the plaintiffs and accepted by the 2nd respondent plus interest as at the date of the Writ amounting to US$56,521.27 and further interest and commission payable under a discounting and financing agreement entered into between them and also date February 12, 1980; and (2) the sum of US$326,202.17 under a written guarantee dated April 21, 1980 given by the 2nd respondent in favour of the plaintiffs and in which the 2nd respondent had guaranteed payment of all the liabilities of the 1st respondent plus interest as at the date of the Writ amounting to US$128,394.23 and further interest and commission.

On May 6, 1982 the appellants obtained, *ex parte*, an interim *Mareva* injunction against both respondents which in effect restrained them from removing from Singapore or otherwise disposing, whether within or without the jurisdiction, of any of their assets (including immovable properties and moneys in bank accounts) in which they (including the partners of the 2nd respondent) were beneficially interested, or otherwise pledging them or giving them by way of security. The respondents were also restrained from re-directing any